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UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

IRACING.COM MOTORSPORT SIMULATIONS, LLC, a Delaware Limited Liability Company,

Civil Action No.

Plaintiff,

05-11639 NG

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TIM ROBINSON, individually and d/b/a www.ow-racing.com and www.torn8oalley.com,

Defendant.

ASSENT TO MOTION TO EXTEND TIME AND CROSS-MOTION FOR REASONABLE COSTS AND ATTORNEY'S FEES

Plaintiff iRacing.com Motorsport Simulations, LLC ("iRacing") respectfully assents to defendant Tim Robinson's ("Robinson") motion to extend time to comply with the Court's Order compelling discovery and cross-moves for the award of iRacing's reasonable costs and attorney's fees associated with its successful motion to compel.

As grounds for this cross-motion, iRacing states:

- 1. Courts can and should penalize litigants for failing to adequately respond to the December 13, 2005 discovery request. See Fed. R. Civ. P. 37(c)(1); Bilrite Corp. v. World Rd. Markings, Inc., 202 F.R.D. 359, 363 (D. Mass. 2001) (among other sanctions, ordering defendant to pay costs, including attorney's fees).
- 2. The Court issued an Order Compelling Discovery on May 1, 2006, finding that Robinson failed to adequately respond to iRacing's December 13, 2005 discovery requests and granting iRacing's motion to compel in full (the "Compel Order").
 - 3. Following the Compel Order, iRacing wrote to Robinson's counsel in a

Robinson filed the motion to extend approximately two hours after asking by e-mail for iRacing's assent, with no other Local Rule 37.1(A) meet-and-confer efforts and without providing iRacing time to respond. This provided iRacing's counsel insufficient time to consider the request or discuss it with iRacing.

letter dated May 10, 2006 and demanded payment of \$1,630 in costs and attorney's fees incurred by iRacing in connection with its successful preparation, filing and argument of the motion to compel. Robinson's counsel did not respond.

4. As provided under Fed. R. Civ. P. 37(a)(4)(A), this Court has found that Robinson failed to adequately respond to December 13, 2005 discovery requests and accordingly Robinson should be required to pay iRacing \$1,630 in reasonable costs, including attorney's fees, incurred by iRacing due to Robinson's false and misleading initial disclosures. Fed. R. Civ. P. 37(c)(1).

DATED: May 31, 2006 Respectfully submitted,

iRacing.com Motorsport Simulations, LLC

By its attorneys,

/S/ Michael G. Andrews

Irwin B. Schwartz (BBO #548763) Michael G. Andrews (BBO# 663452) Petrie Schwartz LLP 500 Boylston Street, Suite 1860 Boston, Massachusetts 02116 (617) 421-1800 (617) 421-1810 (fax)

Certificate of Service

I, Michael G. Andrews, attorney for Plaintiff iRacing.com Motorsport Simulations, LLC, hereby certify that on this 31st Day of May, I filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to: Joseph F. Ryan, Lyne Woodworth & Evarts LLP, 600 Atlantic Avenue, Boston, MA 02210, counsel for Defendant Tim Robinson.

_/S/ Michael G. Andrews Michael G. Andrews

Certification Under LR 7.1(a)(2)

I, Michael G. Andrews, attorney for Plaintiff iRacing.com Motorsport Simulations, LLC, hereby certify that I complied with Local Rule 7.1 as set forth above in that I sent a letter to defendant's counsel on May 10, 2006 requesting payment of reasonable costs and attorney's fees associated with the motion to compel, which letter did not result in the defendant responding in any manner or in any other way resolving the dispute over reasonable costs and attorney's fees.

<u>/s/ Michael Andrews</u>
Michael G. Andrews